Supreme Court, U.S.
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OFFICE OF THE CLERK

No.

In The

Supreme Court of the United States

Dennis Balanay
Defendant - Appellant

Petitioner,

v.

State of Hawaii
Plaintiff - Appellee

Respondent.

On the petition for Writ
of Certiorari to the court
whose judgement you seek to review
Hawaii's in the intermediate court of appeal
May 3, 1999 within case no. 21208
ORDER-DENYING-FOR-RECONSIDERATION.
SEE Appendix (A)

PETITION-FOR-WRIT-OF-CERTIORARI

PRO, SE
Dennis Balanay
P.O. Box 357
Haleiwa, Hawaii 96712
Telephone: 637-9254
(Petitioner)

27 pp

Rule 14.
Content of petition of writ of Certiorari

Rule 14(1) (a)
The Question presented for review

1.

Within the trial week of about July 21, 1997 through July 24, 1997 within Cr. no. 95-2104 consolidated with Cr. no. 96-2065 (plaintiff) - State of Hawaii vs. (defendant) - Dennis Balanay, Honolulu, in the circuit of the first circuit court, Honolulu trial judge Mr. Herbert Shimabukuro violated the United State of America constitution, 14. Amendment.

> nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within jurisdiction the equal protection of the law.

Honolulu trial judge Mr. Herbert Shimabukuro did not instruct the jury with Hawaii revised statute, H.R.S. section 657-31 ten years which was amended in 1973 which says, Hawaii revised statutes H.R.S. section 657-31 twenty years, petitioner, appellant, defendant Dennis Balanay is entitled to jury instruction with Hawaii revised statute H.R.S. section 657-31 ten years which says:

> no person shall commence an action to recover possession of any lands, or make entry thereon, unless within twenty years after the right to bring action first occurred.

2.

(Apponent) appellee, plaintiff - State of Hawaii's prosecuting attorney Ms. Sherri Chun did not present, at trial, any rebuttal eye witnesses, any rebuttal evidence against petitioner, defendant Dennis Balanay. At trial defendant Dennis Balanay raised his defense and claimed adverse possession to tax Map key 1-6-6-01-(3) parcel within Haleiwa, Hawaii 96712, in the State of Hawaii, in the Hawaiian island of Oahu.

Under Hawaii revised statutes H.R.S. section 657-31 ten years, petitioner, appellant defendant Dennis Balanay has legal adverse of possession property title to Tax map key (1) represent the island of Oahu, (1)-6-6-01- parcel 03 within Haleiwa, Hawaii 96712.

Rule 14(1) (a)

The Question presented for review

3.

Under Hawaii revised statutes, H.R.S. section 657-31 ten years, Honolulu, in the circuit of the first circuit court, trial judge Mr. Herbert Shimabukuro has no legal jurisdiction to trial cr.no. 95-2104 consolidated with cr. no. 96-2065 (plaintiff) - State of Hawaii vs. (defendant) Dennis Balanay.

Petitioner, appellant, defendant Dennis Balanay parents Bonifacio Balanay Sr. (father) and Sophie Balanay (mother) bought tax map key (1) 6-6-01-06 parcel in the year of about 1965.

The Balanays of tax map key (1) 6-6-01-06 parcel walked across, drove their car across, tax map key (1) 6-6-03 parcel for about 30 year.

No one has taken the Balanays to court for crossing over tax map key (1) 6-6-01-03 parcel within Haleiwa Hawaii 96712 therefore Balanays have completed Hawaii statute of limitation time period of Hawaii revised statutes H.R.S. 657-31 ten years.

4.

Under Hawaii revised statutes H.R.S. section 657-31 ten years, Honolulu judge Mr. Herbert Shimabukuro is too late to bring any court action against petitioner, defendant appellant Dennis Balanay, cr. no. 95-2104 consolidated with cr. no. 96-2065.

Also supreme court in the State of Hawaii case no. 21208 is too late to bring any court action against petitioner, appellant, defendant Dennis Balanay.

Rule 14(1) (b)

A list of all parties to this proceeding in the court whose judgement is sought to be reviewed.

(1) Petitioner Dennis Balanay wants this court to review Honolulu first circuit trial judge Mr. Herbert Shimabukuro entire trial court proceeding within the trial week of about July 21, 1997 through July 24, 1997 within court issue of cr. no. 95--2104 consolidated with cr. no. 96-2065.

(2) Petitioner, defendant, appellant Dennis Balanay wants this court to review First circuit judge Herbert Shimabukuro, December 4, 1997, court order sentence date of petitioner Dennis Balanay. Dennis Balanay was found guilty on the trial week of July 21, 1997 through July 24, 1997 within cr. no. 95-2104 consolidated with cr. no. 96-2065.

(3) Petitioner appellant, defendant Dennis Balanay wants this court to review the entire court issue-court proceeding within the Supreme Court of the State of Hawaii within case no. 21208.

(4) Under Hawaii revised statutes H.R.S. section 657-31 ten years, first circuit court Honolulu judge Mr. Herbert Shimabukuro within cr. no. 95-2104 consolidated with cr. no. 96-2065 is to late to bring this court action against petitioner Dennis Balanay because petitioner has completed the time period of the ten year and twenty year statute of limitations.

(5) Under Hawaii revised statutes H.R.S. section 657-31 in the Supreme court in the State of Hawaii, Honolulu appellate court has no legal jurisdiction within this court proceeding-court issue within case no. 21208, because under H.R.S. section 657-31 ten years Honolulu appellate court did not bring this court issue on time. Petitioner Dennis Balanay walked across, drove across tax map key (1)-6-6-01-03 parcel for about 29 years. No one arrested Dennis Balanay, no one has taken Dennis Balanay to court since 1965 through 1994. Therefore plaintiff State of Hawaii is too late to commence any legal court proceeding.

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Rule 14 (1) (c)

If the petition exceeds five pages, a table of contents and a table of cited authorities.

(a.) Petitioner, appellant, defendant Dennis Balanay will inform this court that a table of contents and a table of cited authorities, will be attached onto this petition for writ of certiorari, because this petition for writ of certiorari will exceed more than five pages.

Rule 14 (1) (d)

Citation of official and unofficial reports of the opinions and orders entered in the case by courts or administrative agencies.

(a.) The opinions of the appellate court of the State of Hawaii in the Supreme Court of the State of Hawaii on about May 3, 1999 within case no. 21208, Hawaii Supreme Court order deny for reconsideration on May 3, 1999 Hawaii Supreme Court deny petition appellant, defendant Dennis Balanay motion for reconsideration. With specific portions of the record or summary thereof, with specific reference to the place in the record where the matter appears will this court read into court document filed May 3, 1999 within the supreme court in the State of Hawaii within case no. 21208. See Appendix (B) Page 2a, also will this court read into case no: 21208 Intermediate Court of Appeals in the State of Hawaii's Memorandum Opinion filed April 12, 1999 by refernece to the records, will this court read in to Appendix (C) page 4a, through Joint Appendix volume 1, page 17a, for Memorandum Opinion filed April 12, 1999 which is attached to this court document.

Rule 14 (1) (e) (i)

A concise statement of the basis for jurisdiction in this court showing.

(i.) The date the judgement or order sought to be reviewed petitioner, appellant defendant Dennis Balanay wants this court; the Supreme Court of the United States to review, petitioner Dennis Balanay court order May 3, 1999. Also will this court read into case no.: 21208 Intermediate Court of Appeals of the State of Hawaii's Memorandum Opinion, by reference to the record, will this court read into Appendix (C) pages 4a through 17a which are attached to this court document.

Order DENY MOTION FOR RECONSIDERATION which was

filed within case no. 21208 within the intermediate court of appeal in the State of Hawaii, with specific reference to the place in the record where the matter appears. Will this court see and read into Appendix (B) Page 2a for May 3, 1999 order to deny Motion for reconsideration. The petition for writ is filed within 90 days. Also see Appendix (B) pg. a3 & Appendix (C) pg. a5.

Rule 14 (e) (ii)

The date of any order respecting rehearing, and the date and terms of any order granting an extension of time to file the petition for writ of certiorari.

Petitioner appellant, defendant Dennis Balanay will inform this court that petitioner postmarked his petition for writ of certiorari within the Supreme Court of the United States on this date of July 30, 1999.

Will this court see and read into Appendix (I) Page 32a. Appendix (I) is a letter which clerk of the court William K. Suter is asking petitioner to make all corrections within postmarked petition for writ of certiorari.

Rule 14 (e) (iii)

Express reliance on rule 12.5, when a cross-petition for writ of certiorari is filed under that rule, and the date of the docketing of the petition for writ of certiorari in connection with which the cross-petition is filed:

(1) Petitioner appellant defendant Dennis Balanay has not docketed his petition for writ of certiorari. Will this court read into Appendix (A), Appendix (B) and Appendix (C) which is attached onto this document.

Rule 14 (e) (iv)

The statutory provision believed to confer on this court jurisdiction to review on a writ of certiorari the judgement or question and;

(1) Apponent appellee, plaintiff State of Hawaii is too late to recover tax map key (1)-6-6-01-03 parcel. Plaintiff State of Hawaii cannot bring any legal court proceeding against property tax map key (1)-6-6-01-03 parcel within Haleiwa Hawaii 96712. Under Hawaii revised statute H.R.S. section 657-31 ten years petitioner Dennis Balanay has adverse possession legal property title to tax map key (1)-6-6-01-03 parcel within Haleiwa, Hawaii 96712.

Rule 14 (1) (e) (v)

If applicable, a statement that the notification required by rule 29.4(b) or (c) has been made.

(1) Petitioner Dennis Balanay has not made any contact with any attorney general in regard to petitioner, petition writ for certiorari within this case.

Rule 14 (1.)- (f)

The constitutional provisions, treaties, statues, ordinances and regulations involved in this case.

Petitioner Dennis Balanay will inform this court that the constitutional provision involved in this case is the United States of America constitution 14. amendment when Honolulu trial judge Herbert Shimabukuro did not properly instruct the jury with Hawaii's revised statutes sec. 657-31 ten years also HRS 657-31 twenty years for the defendant Dennis Balanay.

Dennis Balanay believes that his civil right to the United States constitution 14. amendment "equal protection of the law"-was denied by Honolulu judge Herbert Shimabukuro when Judge Shimabukuro did not properly instruct jury, with H.R.S. 657-31 ten years within the trial week of July 21, 1997 through July 24, 1997 within the trial and court proceeding of cr. no. 95-2104 and cr. no. 96-2065.

Rule 14 (1.)-(g)-(i)

When the federal Question sought to be reviewed were raised, the method or manner of raising them and the way in which they were passed on by those court.

On October 8, 1997 and on December 4, 1997 within cr. no. 95-2104 and within cr. no. 96-2065 defendant Dennis Balanay filed a court document with actual transcripts of trial week of July 21-24, 1997; within exhibit (B)page 32 is evidence that the court Judge Herbert Shimabukuro took judicial notice of Hawaii Revised statutes sec. 657-31 ten years while defendant Dennis Balanay was being direct examination by his public defender attorney Neil N. Murakami during the trial date of July 22, 1997. Later during the trial, Judge Shimabukuro did not instruct the jury with H.R.S. 657-31 ten years. Read entire court transcript.

Rule 14 (1) (g) (i)

When the federal questions sought to be reviewed were raised, the method or manner of raising them and the way in which they were passed on by those court.

Petitioner, appellant defendant Dennis Balanay will inform this court that under rule 1 (g) (i) under Hawaii revised statutes H.R.S. section 657-31 ten years-same/same seven legislature act 27 section H.R.S 657-31 is amended to read as followed May 8, 1973 H.R.S section 657-31 ten years in amended to H.R.S section 657-31 twenty years. Read as follows:

No person shall commence an action to recover possession of any lands, or make entry thereon, unless within twenty years after the right to bring the action first occurred. Petitioner, appellant, defendant Dennis Balanay will inform this court.

Within cr.no. 95-2104 consolidated with cr.no. 96-2065 during the trial week of about July 21, 1997 through July 24, 1997, Honolulu trial judge Herbert Shimabukuro took judicial notice of petitioner Dennis Balanay defense at trial,. Dennis Balanay defense was Hawaii revised statutes, H.R.S. 657-31 ten years, Dennis Balanay told Honolulu trial Judge Shimabukuro and the jury that Dennis Balanay has a legal adverse of possession property title to tax map key (1)-6-6-01-03 parcel within Haleiwa, Hawaii 96712. Will this court read into court document with specific reference to the place in the record where the matter appears-cr.no.95-2104 consolidated with cr.no. 96-2065 court document filed on about October 8, 1997 and December 4, 1997 within trial judge Herbert K. Shimabukuro took judicial notice of Hawaii revised statutes H.R.S. section 657-31 ten years.

> No person shall commence an action to recover possession of any lands , or make entry thereon, unless within twenty years after the right to bring the action first occurred. October 8, 1997 court document is an actual copy – July 23, 1997 court transcript of Dennis Balanay Testimony during the trial week of July 21, 1997 through July 24, 1997 within cr. No. 95-2104 consolidate with cr. No. 96-2065.

Within July 23, 1997 court document filed into cr.no. 95-2104 consolidate with cr. No. 96-2065 on this date July 23, 1997 (within specific reference to the places in the record where the matter appears). Honolulu trial judge Mr. Herbert K. Shimabukuro prepared a court proposed jury instruction of about page 1 through page 31. Honolulu trial judge herbert K. Shimabukuro proposed court instruction excluded Hawaii revised statutes H.R.S. section 657-31 ten years which says:

> No person shall commence an action to recover possession of any land or make entry thereon,

unless within twenty years after the right to bring action first occurred.

Also, case note 48 Hawaii 17 **Deponte vs. Ulupalakua Ranch**. Honolulu trial judge Mr. Herbert K. Shimabukuro violated the United States constitution of America 14 Amendment. Judge Herbert Shimabukuro denied equal protection on the law against defendant Dennis Balanay when judge Shimabukuro excluded H.R.S. section 657-31 ten years out of his proposed jury instruction on the date of about July 23, 1997, within cr. No. 95-2104 and cr. No. 96-2065.

Balanay has adverse possession, H.R.S. section 657-31, Hawaii revised statutes 657-31 adverse possession property legal title to tax map key (1)-6-6-01-03 property within Haleiwa, Hawaii 96712.

Balanay had the basic element electric power lines and water lines which crossed over and on top of tax map key (1) 6-6-01-03 parcel which connected into Balanay's property tax map key (1)-6-6-01-06 parcel since 1965 through 1999 for about 35 years. Petitioner Dennis Balanay wants this court – the Supreme Court of the United States to read into the entire court Document of March 21, 1996 which was filed within cr. No. 95-2104 court proceeding. Also entire court transcript documents filed Oct. 8, 1997 and Dec. 4, 1997.

Petitioner Dennis Balanay wants this court to consider all court documents filed within this action – court action cr.no. 95-2104 consolidated with cr. No. 96-2065 later appeal into case no. 21208 to become all part to this petition writ of certiorari. Will this court take notice that within the court document filed march 21, 1996 within exhibit (f) eye witness Dereck Ke'a written testimony will reveal to this court that the Balanay's drove across and walked across tax map key (1)-6-6-01-03 parcel since the year of 1965 until about 1994. Also Ke'a testified at trial read into actual court transcript filed on Oct. 8, 1997 and Dec. 4, 1997

Rule 14 (1.)-(h)

A direct and concise argument amplifying the reason relied on for the allowance of the writ.

i. Under case note 3 Haw App 14 **Campbell v. Hipawai Corporation**; the function served by the jury instruction is to inform the jury of the law applicable to the current case.

Also, Hawaii's Adverse Possession law HRS-section 657-31 ten years act 26 section 6 however that this act does not affect rights and duties that matured, penalties that were incurred and proceeding that were begun before the effective date on May 4, 1973.

Will this court read into petitioner Balanay's opening brief filed February 25, 1998 within Hawaii's intermediate court of appeal of the State of Hawaii with case no. 21208

Under case note 48 Haw 21 **Deponte v. Ulupalakua Ranch**, ordinarily it is within the province of the jury to determine from conflicting or doubtful adverse possession, but here, as in this case, the evidence as to the facts necessary to constitute such possession for the statutory period is clear and undisputed and susceptible and but one inference, it becomes one law for the court.

State of Hawaii's prosecuting attorney Ms. Sherri Chun did not present any rebuttal evidence against defendant Dennis Balanay when Balanay claimed adverse possession property title to tax map key 1-6-6-01-03, therefore under Hawaii Revised Statutes section 657-31 ten years Petitioner Dennis Balanay is entitled to a jury instruction that should include HRS-657-31 during the trial week of July 21-24, 1997 within cr. no. 95-2104 and cr. no. 96-2065.

Also, will this court read into court document filed on March 21, 1996 within cr. no. 95-2104 also will this court read into court documents filed on October 8, 1997 within cr. no. 96-2065. Also December 4, 1997 **Waianae Co. vs. Kaiwilei** 24 Haw. 1.

The whole doctrine of prescription is founded upon public policy. It is a matter of public interest that title to property should not long remain uncertain and in dispute. The doctrine of prescription contributes in that respect to the interest of society, and at the same time promotes private justice, putting an end to and fixing a limit to contention or strife.

Protest and denials, and mere denials of right are evidence the right is in dispute and distinguished from a contested title, if such protest and denials, unaccompanied and is actionable as such, be permitted to put a right in abeyance the policy of the law will be defeated and prescriptive rights will be placed upon the most unstable of foundation.

By adverse possession of land for the statutory period of limitation the adverse holder acquires a title in fee simple which is a perfect as a title by deed, its legal effect is not only to bar the remedy of the owner of the paper title, but to divest his estate and vest it in the party holding adversely for the required period of time. See **Waianae Co. vs. Kaiwilei**, 24 Haw. 1.

Petitioner Dennis Balanay will inform this court to read into cr.no. 95-2104 and cr.no. 96-2065 court documents filed on the date of March 21, 1996 which is filed within in the circuit of the first circuit court in Honolulu in the State of Hawaii. Also will this court read into the entire court documents filed within the Supreme Court of the State of Hawaii

within case no. 21208. "Dennis Balanay is entitled to the allowance of the writ of certiorari's writ."

Within case note **State vs. Maelega** 178.179

> "A defendant is entitled to an instruction on every defense or theory of defense having any support in the evidence. Provided such evidence would support the consideration of that issue by the jury, no matter how weak, inconclusive or unsatisfactory the evidence may be."

Will this court read into the entire court documents filed on the date of March 21, 1996 within cr.no. 95-2104. Also, the entire court documents within the Supreme court of the State of Hawaii under case no. 21208 within Feb. 25, 1998.

United States Code annotated,
Title 28, Judicial and Judicial procedure, section 1251 to 1331

28 section 1257 Supreme Court – Jurisdiction Part 4
Commentary on 1988 Revision
by David D. Siegel

Ch. 81 State Courts 28 section 1257

> Note that the section allows certiorari to review not just a decision of the "highest court" of a state, but of the highest state court "in which a decision could be had." That language, contained in the old section and repeated in the new, takes note of the internal strictures a state may impose on appeals within its own court system, perhaps stopping a case at some lower level and barring it from review by the state's highest court, or, for that matter, from any appellate court at all. If that case nevertheless poses a federal question, review of it can be applied for the U.S. Supreme Court – solely by the certiorari route, of course – from whatever court is has been able to reach within the state system.

Rule 14 (1)-(h)

The reason relied on for the allowance of the writ.

However, Honolulu trial judge Herbert Shimabukuro denied to properly instruct the jury with HRS-sec 657-31 ten years for the defendant Dennis Balanay within the trial week of July 21-24, 1997 within cr. no. 95-2104 and cr. no. 96-2065. Will this court read into Oct. 8, 1997 and Dec. 4, 1997 court documents

Because judge Herbert Shimabukuro did not instruct the jury with HRS 657-31 ten years for the defendant Dennis Balanay. Honolulu Judge Shimabukuro violated Dennis Balanay's civil right to the United States constitution 14. amendment "due process of law and equal protection of the law." For proof that Honolulu Judge Shimabukuro denied to instruct the jury with HRS-sec 657-31 ten years; will Supreme Court of the United States read into court document filed on Oct. 8, 1997 and Dec. 4, 1997 within cr. no. 95-2104 and cr. no. 96-2065 within the circuit of the first circuit court within the State of Hawaii, Honolulu, Oahu.

Will this court read into October 8, 1997 court document file within cr.no. 95-2104 consolidated with cr.no. 96-2065. October 8, 1997 is actual court transcripts of trial week July 21-24, 1997. Within court transcript of October 8, 1997, this court will be informed within page 27 through page 69, is defendant Dennis Balanay's trial testimony- trial defense. In which defendant claims adverse possession to tax map key (1)-6-6-01-03 parcel property with in Haleiwa, Hawaii 96712

Rule 14 (1.) (h) (ii)

Allowance of the writ

(ii) Lower court within cr. no. 95-2104 and cr. no. 96-2065 within the trial week of July 21-24, 1997 Honolulu trail Judge Herbert Shimabukuro has no legal jurisdiction to trial the above court preceding, because under Hawaii's Revised Statutes section 657-31 ten years which says, no person shall commence an action to recover possession of any lands, unless within twenty years after the right to bring the action first occurred.

The State of Hawaii had to bring this court proceeding within HRS-sec 657-31 statutory of limitation time period twenty years.

Bonifacio Balanay Sr. and Sophie are the parents of the petitioner Dennis Balanay; Bonifacio and Sophie bought Tax map Key 1-6-6-01-06 in the year of February 1, 1965 and began driving, walking, across Tax Map Key 1-6-6-01-03 since 1965 until 1999 that about 39 years of cross-

ing over Tax Map Key 1-6-6-01-03 parcel within Haleiwa, Hawaii 96712.

The State of Hawaii brought petitioner Dennis Balanay into court into the year of about 1995 under case no. 95-2104. State of Hawaii is about 10 years too late to commence legal action against Dennis Balanay of Tax Map Key 1-6-6-01-06 for proof of adverse possession claim to Tax Map Key 1-6-6-01-03 will this Supreme Court of the United States read into Dennis Balanay entire court documents of 95-2104 and 96-2065

Also, will this court read into court document filed on March 21, 1996 within cr. no. 95-2104 see exhibit (c)-p1-p8 for proof of property deed which petitioner Dennis Balanay owns Tax Map Key 1-6-6-01-06. Also see exhibit (i) p1-p7 Hawaiian Electric pole easement which connect to petitioner Balanay property since 1965. Also, see exhibit (i) p8 will prove that petitioner received Honolulu Board of Water Supply since 1965.

(iii) Name of the issue of the court.

Will this court see Appendix (A). Also, read into entire court document within cr.no. 95-2104 consolidated with 96-2065, also, Supreme Court of the State of Hawaii case no. 21208.

Rule (1) (h) (iv)

Judgement sought to be reviewed. Petitioner Balanay will inform this court that petitioner is asking this court to review petitioner's petition for writ of certiorari under Hawaii revised statutes, H.R.S. section 657-31 ten years. Also, under United States Code 28 Section 1257, Supreme Court – Jurisdiction, part 4 commentary on 1988 Revision by David D. Siegel, Chapter 81 State Court, 28 Section 1257.

United States Code annotated,
Title 28, Judicial and Judicial procedure, section 1251 to 1331

28 section 1257 Supreme Court – Jurisdiction Part 4
Commentary on 1988 Revision
by David D. Siegel

Ch. 81 State Courts 28 section 1257

Note that the section allows certiorari to review not just a decision of the "highest court" of a state, but of the highest state court "in which a decision could be had." That language, contained in the old section and

repeated in the new, takes note of the internal strictures a state may impose on appeals within its own court system, perhaps stopping a case at some lower level and barring it from review by the state's highest court, or, for that matter, from any appellate court at all. If that case nevertheless poses a federal question, review of it can be applied for the U.S. Supreme Court – solely by the certiorari route, of course – from whatever court is has been able to reach within the state system. Will this court also read into Appendix (A) page 31 (A) to 36 (A) of U.S.C.A. Title 28 Section 1257.

Rule 1(h) (v)
Material required by subparagraphs 1(a) or 1(g)(i).

To understand this petition for writ of certiorari, this court, the Supreme Court of the United States has to read into entire court documents filed within cr.no. 95-2104 consolidated with cr.no. 96-2065 (plaintiff) State of Hawaii vs. (defendant) Dennis Balanay, all court documents and all court material is located inside of Hawaii, in the circuit of the first circuit court, within the State of Hawaii within the Hawaiian Island of Oahu in Honolulu.

Also, cr.no. 95-2104 and cr.no. 96-2065 was appealed into the Supreme Court of the State of Hawaii under case no. 21208. Therefore, petitioner Dennis Balanay is asking this court to consider all court materials and every court document filed within cr.no. 95-2104 and cr.no. 96-2065 and case no. 21208 to be parts of this petition for writ of certiorari within this court, the Supreme Court of the United States and Rule 1(h)(vi) any other material petitioner believes essential to understand the petition.

Petitioner will inform this court that every statement which is mentioned within the above Rule 1(h)(v) is to be a part of the question within Rule 1 (h)(vi). But for a more specific portion of the court records petitioner wants this court to consider seeing court documents filed March 21, 1996 within cr.no. 95-2104 which will reveal to the court, an actual photograph of the roadway across the tax map key (1)-6-6-01-03 parcel. See exhibit (A), (B), (C), and all other exhibits attached to March 21, 1996 court documents for an actual photograph of the existing roadway across Tax Map Key 1-6-6-03. Also will this court read into July 21-24, 1999 trial week actual court transcript within court documents filed Oct.

8, 1997 and Dec. 4, 1997 and Feb. 25, 1998.
Also will this court read the entire court document filed Feb 25, 1997 within Hawaii Supreme Court under case no.: 21208. Also will see page 28a, 29a and 30a are photos of roadway existing across TMK 1-6-6-01 parcel (3).

Summary

During the trial week July 21, 1997 through July 22, 1997 within cr.no. 95-2104 consolidated with cr.no. 96-2065 defendant Dennis Balanay was entitled to a jury instruction. At trial, defendant Dennis Balanay raised his defense and said that under Hawaii revised statutes H.R.S. section 657-31 ten years which says:

No person shall commence an action to recover possessions of any lands, or make any entry thereon unless within twenty years after the right to bring the action first occurred. Also, defendant Dennis Balanay raised his defense at trial that under H.R.S. section 657-31 ten years defendant Dennis Balanay has a legal prescription property title, adverse of possession property title to tax map key (1)-6-6-01-03 parcel within Haleiwa, Hawaii 96712 within the Hawaiian Island of Oahu.

State of Hawaii prosecuting Attorney Ms. Sherri Chun did not produce at trial a rebuttal eye witness who could come into court and say that Balanay is not adverse of possession to tax map key (1)-6-6-01-03 parcel. Because the court issue was undisputed, plaintiff's State of Hawaii did not present rebuttal eye witness against defendant Dennis Balanay trial defense which he said at trial I Dennis Balanay has legal property deed, legal adverse of possession title deed to tax map key (1)-6-6-01-03 parcel within Haleiwa, Hawaii. See entire court document filed October 8, 1997 and December 4, 1997 and Feb. 24, 1997.

Also, under H.R.S. 657-31 ten years case note: Ordinarily it is within the province of the jury to determine from conflicting or doubtful adverse possession, but here as in this case, the evidence as to the facts necessary to constitute such possession for statutory period is clean and undisputed and susceptible and but one inference, it becomes one law for the court. 48 HAW.21 **Deponte vs. Ulupalakua Ranch.**

Also, under H.R.S. 657-31 ten years and under case note: **Waianae Co. vs. Kaiwilei** 24 Haw. 1. Because petitioner, appellant, defendant Dennis Balanay trial defense was Hawaii revised statutes H.R.S. section 657-31 ten years and defendant Dennis Balanay presented Photographs of road

way existing across tax map key (1)-6-6-01-03 as evidence exhibit (e) (f) (g) (h) during the trial week of July 21 through 24, 1997 within cr.no. 95-2104 consolidated with cr.no. 96-2065 and that since 1965 through 1994 a road existed across Tax map key (1)-6-6-01-03 also that defendant Dennis Balanay's parents, brothers, sisters drove and walked across roadway across tax map key (1)-6-6-01-03 parcel within Haleiwa Hawaii 96712. Automatically under H.R.S. 657-31 defendant Dennis Balanay has a property deed adverse of possession title to tax map key (1)-6-6-01-03 property within Haleiwa, Hawaii 96712. This petition for writ of certiorari should be granted to petitioner, appellant, defendant Dennis Balanay because the Hawaii Lower State Court and Hawaii's appellate-Hawaii Supreme court has denied to protect defendant Dennis Balanay with Hawaii revised statute H.R.S. section 657-31 ten years. Therefore, petitioner, appellant, defendant Dennis Balanay is asking the United States Supreme Court of the United States to review the entire case of cr.no. 95-2104 consolidated with cr.no. 96-2065 which it was appeal into the Supreme Court of the State of hawaii under case no. 21208.

For actual photographs of roadway across tax map key 1-6-6-01-03, will this court read into entire court document filed February 25, 1998 within cr.no. 21208 also will this court read entire court documents filed March 21, 1996 within cr.no. 95-2104 also will this court read into court documents filed October 10, 1997 and December 4, 1997 and February 25, 1998. The above court documents will reveal into this court actual court transcript of Dennis Balanay's testimony at trial on July 21-24, 1996 within cr.no. 95-2104 consolidated cr.no. 96-2065 appeal into case no. 21-208. Also will this court see and read into Joint Appendix volume 1, which is attached to this court document, see Joint Appendix volume 1, pages 28a-30a. Pages 28a-30a are actual photos of roadway across TMK 1-6-6-01-03 since the years of 1965 until this year 2000.
Also will this court take notice that Hawaiian Electric Company installed High Voltage electric poles across TMK 1-6-6-01-03 will this court see and read into Joint Appendix page 26a, electric poles installed May 7, 1966 also page 24a is Balanay's property deed to TMK 1-6-6-01-06, also 27a Balanay of TMK 1-6-6-01-06 laid their water pipes of about 280 feet in length across TMK 1-6-6-01-03 since 1967 until the year 2000. Will this court read into page 27a of this court document

Appendices (A), (B), (C), (D), (E) and page 36 (A) are to inform this court that Dennis Balanay petition for writ is filed on time also all correction is filed on time under common law 28 U.S.C.A. 1257.

Summary

Also under the statutes of (U.S.C.A.) United States Code Annotated Title 28 Section 1257, for a copy of U.S.C.A. 28 Sec. 1257 will this court read into Appendix (A) page 31 (A) to Page 36 (A), under 28 U.S.C.A. Section 1257 Petitioner Dennis Balanay is entitled to a judiciary and judicial review by the Supreme Court of the United States located in Washington D.C. 20543-0001.

Conclusion

Under United States Code Annotated (U.S.C.A.) Title 28 Section 1257, petitioner Dennis Balanay is entitled to a complete judiciary and a complete judicial review of Dennis Balanay's petition for Writ of Certiorari by the Supreme Court of the United States located in Washington D.C. 20543-0001.

Respectfully submitted

PRO, SE
Dennis Balanay
P.O. Box 357
Haleiwa, Hawaii 96712
Telephone: (808) 637-9254
(Petitioner)

Counsel of Record
Andrea T.Y. Low
Deputy Prosecuting Attorney
1660 Richard Street
Honolulu, Hawaii 96813
Telephone: 527-6494
(Respondent)

Acknowledgment

This petition for writ of certiorari will be signed by the petitioner Dennis Balanay on this date of **May, 2000**

Signed by: Dennis Balanay — May 12, 2000

Dennis Balanay — On this date

APPENDIX A - ORDER

NO. 21208
IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I Respondent-Appellee,	)	CR. NOS. 95-2104 and 96-2065
v.	)	
DENNIS BALANAY, Petitioner-Appellant	)	

FILED
MAY 24 1 02 PM '99
EUGENE H. SADAO
CLERK SUPREME COURT

ORDER

Petitioner Dennis Balanay's Application for Writ of Certiorari filed on May 12, 1999 is hereby denied.

DATED: Honolulu, Hawai'i, May 24, 1999.

FOR THE COURT:

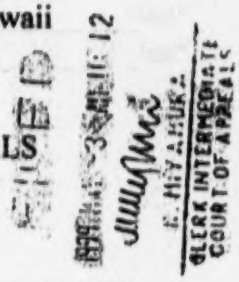
Chief Justice

Theodore Y. H. Chinn, Deputy
Public Defender and
Jon N. Ikenaga, Deputy
Public Defender
for the writ

APPENDIX B - ORDER DENYING MOTION FOR RECONSIDERATION

Honolulu, Hawaii May 3, 1999 within the
Intermediate Court of Appeals of the State of Hawaii

NOS. 21203 AND 21399



IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

STATE OF HAWAI'I	)	CR. NOS. 96-2065 & 95-2104
Plaintiff-Appellee,	)	
v.	)	APPEAL FROM
DENNIS BALANAY,	)	FIRST CIRCUIT COURT
Defendant-Appellant)		

ORDER DENYING MOTION FOR RECONSIDERATION

Upon consideration of the motion for reconsideration filed on April 22, 1999, it appears that the motion was filed *pro se* by Defendant-Appellant Dennis Balanay, who is represented by legal counsel. Defendant-Appellant does not have a constitutional "right to hybrid representation. Such representation is in the discretion of the trial court." State v. Hirano, 8 Haw. App. 880, 886, 802 P.2d 8482, 485 (1990), cert. denied. Assuming such representation is also in the discretion of the appellate court,

IT IS HEREBY ORDERED that the motion is denied the merits.

DATED: Honolulu, Hawai`i, May 3, 1999

"se/_____" 1. James S. Burns
"se/_____" 2. Corinne K.A. Watanabe

Appendix C

NOS. 21208 AND 21399
IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'I

STATE OF HAWAI'I Plaintiff-Appellee,	)	CR. NOS. 96-2065 & 95-2104
	)	APPEAL FROM THE
v.	)	FIRST CIRCUIT COURT
	)	
DENNIS BALANAY, Defendant-Appellant	)	

MEMORANDUM OPINION

Defendant-Appellant Dennis Balanay (Dennis) appeals the following two judgements of the First Circuit Court: (1) the one count of False Reporting to Law-Enforcement Authorities (false reporting), [1/] Hawai'i Revised Statutes (HRS) § 710-1015 (1993), [2/] and sentencing him to probation for one year; and (2) the December 4, 1997 Judgement in Criminal No. 96-2065 "convicting" him of two counts of false reporting and sentencing him to probation for one year as to each count. Both judgements were based upon the jury's verdict. All sentences ran concurrently.

On appeal, Dennis raises the following points of error: (1) there was insufficient evidence to support his conviction; (2) the State of Hawai'i (the State) failed to negative his mistake of fact defense; (3) the trial court erred in failing to dismiss the charges as *de minimis*; (4) the trial court gave prejudicial and misleading jury instructions; and (5) the trial court erred in failing to instruct the jury on the defense of mistake of law. "We affirm."

1/ On October 17, 1995, Defendant-Appellant Dennis Balanay (Dennis) was charged with one count of False Reporting to Law-Enforcement Authorities (false reporting), Hawai'i Revised Statutes (HRS) § 710-1015 (1993), in Criminal No. 95-2104. On October 7, 1996, Dennis was charged with two counts of false reporting in Criminal No. 96-2065. The two cases were consolidated for trial on November 26, 1996 and Dennis was convicted on all three counts.

2/ HRS § 710-1015 reads:

> **False reporting to law-enforcement authorities.** (1) A person commits the offense of false reporting to law-enforcement authorities if the person intentionally makes a report or causes the transmission of a report to law-enforcement authorities relating to a crime or other incident within their concern when the person knows that the information contained in the report is false.
>
> (2) False reporting to law-enforcement authorities is a misdemeanor.

I. BACKGROUND

According to real property tax records, Dennis and David Robichaux (Robichaux) owned adjoining properties in zone 6, section 6, plat 1. Robichaux owned zone 6, section 6, plat 1, parcel 3 (parcel 3) after purchasing it from the estate of Lincoln Char (Char Estate) in 1994. Dennis, his mother Sophie Balanay (Sophie), and his father Bonifacio Balanay, Sr. (Bonifacio Sr.) (collectively, the Balanays) owned zone 6, section 6, plat 1, parcel 6 (parcel 6), located directly behind parcel 3.[3/] Dennis disputed Robichaux's ownership of parcel 3 and the "dirt road way or dirt track" which crossed through parcel 3 leading to parcel 6.

Sophie and Bonifacio Sr. purchased parcel 6 in 1965, and the Balanays have lived there since then. Through his research at public libraries, Dennis learned about the law of adverse possession. He based his understanding of adverse possession on HRS § 657-31 and related cases. He understood the "elements" of adverse possession to be "actual, open, hostile, notorious, continuous and uninterrupted [.]" Dennis alleged that he had met these requirements with respect to parcel 3 from 1965 until 1992 and, according to HRS 657-31, the 20-year statute of limitations had expired. Thus, Dennis maintained that he was the legal owner of parcel 3 by adverse possession.

On June 2, 1992, the Char Estate filed a complaint against Sophie, Bonifacio Balanay, Jr. (Bonifacio Jr.), and Dennis claiming legal ownership of parcel 3. On June 26, 1992, Dennis and Sophie, acting *pro se*, filed an answer opposing the complaint and alleging adverse possession. On June 29, 1992, Dennis, Sophie, and Bonifacio Jr., through their attorney, James Countiss (Countiss), filed an answer to the complaint and a counterclaim for legal ownership by adverse possession. On July 22, 1992, Dennis, Sophie, and Bonifacio Jr., acting *pro se*, filed an answer opposing the complaint and alleging adverse possession.

On September 29, 1993, the circuit court entered its Order Granting (Countiss's) Motion to Withdraw as Council for Defendants Sophie Balanay, Bonifacio Balanay [, Jr.,] and Dennis Balanay. Dennis testified that Countiss withdrew without notifying him or his fellow defendants.

On January 14, 1994, Dennis, Sophie, and Bonifacio Jr. failed to attend a hearing on a motion for default judgement. Dennis testified that he was not informed of this hearing. The court then dismissed the counterclaim and entered a default judgement against the defendants. As a result, Dennis and his fellow defendants were enjoined from entering parcel 3. Dennis testified that he received the default judgement in the mail but "relied on one of the court's rule [s] for not answering to the default, that's Hawaii Rules of Civil Procedure Rule 13, in case something is pending, the pleador need not answer."

In February 1994, Robichaux bought parcel 3 from Char Estate. He received a warranty deed and obtained three title insurance policies assuring ownership. The court also issued its January 31, 1994 Order Confirming Sale of

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3/ Defendant's Exhibit "J" states that "on Nov[.] 15, 1988, Bonifacio Balanay Sr. passed away [.]" At trial, Dennis testified that "[m]y dad passed away in the year 1987.

Real Property (January 31, 1994 Order). In addition, the city recognizes Robichaux as the person who has paid the property taxes on parcel 3. 4/

Despite the evidence establishing Robichaux's ownership of parcel 3, Dennis continued to claim he owned parcel 3 through adverse possession. Consequently, whenever Dennis saw Robichaux on parcel 3, he called the police to report Robichaux for trespassing. Robichaux estimated that the police came to his house "between thirty and forty" times. Each meeting lasted approximately fifteen to thirty minutes.

On March 12, 1994, Honolulu Police Department (HPD) Officer Terry Leach (Officer Leach) arrived at parcel 3 in response to a call by Dennis. Robichaux presented Officer Leach with "a copy of the warranty deed and copies of civil papers" as proof of his ownership. Officer Leach then explained to Dennis that Robichaux's documents proved Robichaux owned parcel 3 and that Dennis could "take it up through civil court [.]" He also warned Dennis that he could be arrested for false reporting if he reported information to the police which he knew was not true.

On September 25, 1994, HPD Officer Harry Coelho (Officer Coelho) responded to a call by Dennis. Dennis and Robichaux told Officer Coelho that they would take the matter to civil court. This incident resulted in Court I of the October 7, 1996 Complaint in Criminal No. 96-2065.

On November 8, 1994, an attorney for Robichaux wrote to Dennis offering him a license to use the roadway across parcel 3. Dennis responded with a letter to the attorney claiming that Dennis owned the roadway and warning that "unwanted people who cross over my road is [sic] tresspassing [sic]. Yes, I will call 911 Honolulu police and file a report on people tresspassing [sic] over my road."

On February 11, 1995, HPD Officer Jesse Babauta (Officer Babauta) responded to a call by Dennis. After Robichaux showed Officer Babauta the January 31, 1994 Order, Officer Babauta explained to Dennis that Robichaux was not trespassing and that Dennis "should contact a lawyer if . . . he wants to dispute the claim [to parcel 3]." This incident resulted in Count II of the October 7, 1996 Complaint in Criminal No. 96-2065.

On March 6, 1995 Officer Leach responded to another call by Dennis. Officer Leach again tried to explain to Dennis that Robichaux had documents proving he owned parcel 3 and that he was not tresspassing. After Dennis "kept complaining that the court papers didn't mean anything to him," Officer Leach .

4/ Dennis testified in relevant part as follows:

> [A]ccording to the statutes, 84 CJS, tax station 414, it says any particular land that is connected to a certain property is assessed -- purposes is [sic] for assessment. So my mom, that property . . . is connected to parcel 1 -- tax map key 1-6-6-01-6, parcel 3, we have been paying taxes on that thirty years, it's equivalent.

arrested him for false reporting. This incident resulted in the October 17, 1995 Complaint in Criminal No. 95-2104.

The jury trial for the consolidated cases, Criminal Nos. 95-2104 and 96-2065, commenced on July 21, 1997. At trial, Dennis relied on a mistake of fact defense and alleged that he believed he was the owner of parcel 3 when he reported that Robichaux was tresspassing.

In her closing argument, the Deputy Prosecuting Attorney (DPA) told the jury that "[t]his case is about whether or not the defendant knew what he was doing was false reporting, whether or not he knew that the information in the report was false."

Counsel for Dennis then argued to the jury in relevant part as follows:

> As the prosecutor told you, a person commits the offense of False Reporting to Law Enforcement Authorities if the person intentionally makes a report or causes a transmission of a report to law enforcement authorities relating to the crime or the incident within their concern when the person, and it was read to you the person is Dennis Balanay, knows that the information contained in the report is false. . . .
>
> * * *
>
> Now, the Judge is going to give you . . . an instruction regarding basically a mistake of fact. And part of the instruction is going to read as follows. In this case the defendant, Dennis Balanay, is provided a defense to the charge if he was ignorant or mistakenly -- mistaken even though reasonably or recklessly as to a fact that negates his knowing that the information contained in the report was false.
>
> * * *
>
> And remember when you look in those instructions if he is mistaken or ignorant, that's a defense. And that mistake or ignorance can be reasonable or -- or, ladies and gentlemen, it can be reckless. He can substantially disregard an unjustified and substantial risk to the contrary. That's what the law allows him to do before it becomes a crime.

The DPA responded by stating in relevant part:

> Reason and common sense. That's the standard . . . [Remember] we can't get into or know what's in somebody's mind. All you know is what facts are or as they were presented

to you and what a reasonable person would know in those circumstances.

After an objection by defense counsel, the following discussion took place at a bench conference:

[Defense Council]: . . . [S]he's saying, Judge, what a reasonable person would know the standard is on that. As the complaint reads, my client knows and I want to be very specific that the jury knows a reasonable person in this situation what they would know, she's got to prove what my person knows.

[DPA]: There's no other way of proving what somebody knows other than the evidence. They can't get into this person's head and say what this one person knows.

The court then overruled defense counsel's objection, and the DPA continued her argument in relevant part as follows:

[DPA]: Thank you.

What you have to do is apply the evidence and the facts to determine what a reasonable person would have known in the same circumstance. . . .

. . . The issue in this case is whether or not faced with the circumstances, all of the circumstances, that he was faced with he should have known that what he was doing was wrong. . . .

* * *

This case is about a criminal court, its held in criminal court. And you, the jury, who have listened to all of the facts in this case need to take those facts and apply them to the two elements. The first one, which is uncontroverted, is that the defendant intentionally made a report to law enforcement officers about a crime. The second element you need to apply the facts to it, whether the defendant knew those circumstances were false when he did it.

(The remainder of April 22, 1999 Memorandum Opinion is attached to Joint Appendix Volume One.)